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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

January 4, 1993

BY HAND

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Mandatory Carriage of Broadcast
Television Signals, MM Docket No. 92-259

Dear Ms. Searcy:

Please find enclosed, on behalf of the National Association of Telecommunications Officers and Advisors, et. al., an original and nine copies of comments filed as part of the Commission's proceeding in MM Docket No. 92-258.

Any questions regarding the submission should be referred to the undersigned.

Sincerely,

William E. Cook, Jr.
William E. Cook, Jr.

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of)
)
Implementation of the)
Cable Television Consumer)
Protection and Competition)
Act of 1992)
)
Mandatory Carriage of Broadcast)
Television Signals)
)

MM Docket No. 92-259

TO: The Commission

COMMENTS OF THE
NATIONAL ASSOCIATION OF TELECOMMUNICATIONS
OFFICERS AND ADVISORS, NATIONAL LEAGUE OF
CITIES, UNITED STATES CONFERENCE OF MAYORS,
AND THE NATIONAL ASSOCIATION OF COUNTIES

The National Association of Telecommunications
Officers and Advisors, the National League of Cities,
the United States Conference of Mayors, and the National
Association of Counties (collectively, the "Local
Governments") hereby submit these comments in the above-
captioned proceeding.

I. INTRODUCTION.

The Federal Communications Commission ("FCC" or
"Commission") seeks comment on proposed rules to
implement Sections 4 and 6 of the Cable Television
Consumer Protection and Competition Act of 1992 ("1992

Act"), and to govern the mandatory carriage of qualified local noncommercial educational television stations pursuant to Section 5 of the 1992 Act.

Section 4 of the 1992 Act imposes mandatory carriage requirements on cable operators with respect to local commercial television broadcast stations and qualified low power stations. Section 6 prohibits cable systems and other multichannel video programming distributors from retransmitting the signal of a commercial broadcasting station without the express authority of the originating station. The 1992 Act directs the Commission to adopt regulations to implement these provisions.

Section 5 of the Act, governing mandatory carriage by cable operators of the signals of qualified local noncommercial educational television stations, took effect on December 4, 1992. The Commission also seeks comment on proposed rules to govern mandatory carriage of noncommercial stations under Section 5. At this time, enforcement of rights under Section 5 by qualified local noncommercial educational television stations is subject to the terms of a Standstill Order issued December 9, 1992 by the United States District Court for the District of Columbia in Civil Action Nos. 92-2247, 92-2292, 92-2494, 92-2495 and 92-2558.

II. DISCUSSION.

A. PEG Access Channels.

Section 4 of the 1992 Act provides that cable operators required to carry more than one signal of a qualified low power station may do so, subject to approval by the franchising authority, by placing such additional low power station on public, educational, or governmental channels ("PEG Channels") that are not in use for their designated purposes. Similarly, Section 5 authorizes cable operators required to add the signals of qualified local noncommercial educational television stations to their systems to place those signals on PEG Channels, subject to approval by the franchising authority when PEG Channels are not in use for their designated purposes. The Commission seeks comments on proposed rules to govern the placement of mandatory carriage signals on PEG Channels under these provisions.

As a preliminary matter, the Local Governments note that Section 611 of the Communications Act of 1934, as amended (the "Act")¹ directs franchising authorities to adopt rules under which a cable operator is permitted to use a PEG Channel capacity if that channel is not

¹ Section 611 was adopted as part of the Cable Communications Policy Act of 1984, in which Congress sanctioned the longstanding practice by franchising authorities of designating channels on cable systems for PEG use.

being used for its designated purposes. Franchising authorities are also authorized to establish rules to recapture the PEG Channels for their intended purposes. Local Governments believe that the use of PEG Channels under Sections 4 and 5 of the 1992 Act must be consistent with the pre-existing "fallow time" provisions of Section 611. Therefore, any rules the Commission adopts to implement Sections 4 and 5 of the 1992 Act must be consistent with these fallow time provisions. PEG Channels can only be used in a manner that is consistent with the rules and regulations for the non-PEG use of these channels adopted by franchising authorities.

The Local Governments also believe that rules governing the placement of mandatory carriage signals on PEG Channels must be narrowly drawn to protect the primary needs for which those channels have been dedicated by franchising authorities. PEG Channels ensure that a range of programming in the public interest from diverse sources is provided over local cable systems.

PEG Channels are comprised of governmental channels, which are programmed by a government-related entity or government agency; educational channels, which may be programmed by the local school system or local institutions of higher learning; and public access

channels, which are available to the public for program distribution. Public access channels are often managed by a "public access organization", comprised of members of the community and independent of the local franchising authority, that establishes and administers rules for the distribution of programming by the public.

Congress has recognized the unique nature and important function of PEG Channels:

Public access channels are often the video equivalent of the speaker's soap box or the electronic parallel to the printed leaflet. They provide groups and individuals who generally have not had access to the electronic media with the opportunity to become sources of information in the electronic marketplace of ideas. PEG channels also contribute to an informed citizenry by bringing local schools into the home, and by showing the public local government at work.

H.R. Rep. No. 98-934, 98th Cong., 2d Sess. 30 (1984).

PEG Channels are an important source of diverse information from many sources. It is estimated that approximately 2,000 PEG access centers produce about 10,000 hours of local programming a week, and that approximately 30 million homes or 70 million people are provided with an access channel on their cable system.²

² See Joint Comments of the Alliance for Community Media, et. al. in the Matter of Implementation of Section 10 of the Cable Consumer Protection and Competition Act of 1992: Indecent Programming and Other Types of Materials on Cable Access Channels, MM Docket No. 92-258 (filed Dec. 7, 1992).

As discussed more fully below, the Local Governments believe that in order for PEG Channels to remain fully available to serve as the public outlets for which they are intended, the Commission's rules must afford franchising authorities a substantial degree of flexibility in determining when to approve, disapprove or withdraw approval of, any request for placement of a mandatory carriage signal on a PEG Channel.

The Local Governments accordingly submit that the rules adopted by the Commission to govern the PEG Channel mandatory carriage provisions of Sections 4 and 5 of the 1992 Act should supplement the fallow-time rules adopted by a franchising authority as follows:

-- Cable operators may only place mandatory carriage signals on PEG Channels if the cable system does not possess any other capacity for carriage of those signals. Cable operators bear the burden of demonstrating that they are presently taking advantage of the full capacity of their cable system and that there are no reasonable means of adding channel capacity to accommodate the Section 4 and 5 requirements. During the time that a PEG Channel is used for retransmission of a mandatory carriage signal, the cable operator must continue to attempt to locate or engineer its system to find other available capacity for retransmission of the signal on its cable system, and must continue to

demonstrate to the franchising authority, at least every six months, that no other capacity exists or can be developed on the system for retransmission of the signal.

-- A PEG Channel may be used for retransmission of a mandatory carriage signal only when the PEG Channel is fully unused for its designated purpose. If any portion of a PEG Channel is used for its designated purpose, the franchising authority need not approve placement on the channel of a mandatory carriage signal.

-- If at any time additional channel capacity is developed on a cable system, the cable operator must move any mandatory carriage signals carried on that system's PEG Channels to the newly-available cable system channel within 30 days after the new channel becomes available.

-- If at any time the franchising authority determines that a use for a PEG Channel exists or will come into existence within six months, which use is related to the PEG Channel's designated purpose, and the PEG Channel is being utilized for retransmission of a mandatory carriage signal or would otherwise be available for such use, the franchising authority shall provide notice to the cable operator that the mandatory carriage signal must be removed from the PEG Channel or that the PEG Channel is not available for such use. The

cable operator must remove the mandatory carriage signal from the PEG Channel within 30 days of the date of that notice.

-- If at any time a new PEG Channel becomes available, the PEG Channel will automatically be treated as in use for its designated purpose for a period of one year from the time that it becomes available.

* * *

The Local Governments believe that these rules will accommodate the Congressional interest in ensuring the availability of cable channels for use by public entities in a number of ways.

The proposed rules recognize: (1) the enormous potential that PEG Channels offer as an outlet for alternative and meaningful programming, particularly programming directed to otherwise unserved or underserved groups; and (2) that the demand for PEG Channels will grow substantially as innovative access programming further develops. Any rules established by the Commission must ensure that PEG Channels will only be used for the retransmission of mandatory carriage signals under circumstances where there is truly no

public need for the PEG Channels, either presently or within the near future.³

Similarly, many franchise agreements confer jurisdiction over PEG Channels to independent local access organizations. These independent entities often enter into detailed written agreements with cable operators governing the use and management of the PEG Channels. The rules proposed here provide flexibility to the franchising authority to ensure that PEG Channels will remain available to access organizations to the greatest extent possible consistent with the mandates of the 1992 Act.

The Commission is urged to adopt the rules proposed herein to govern the procedures by which franchising authorities are authorized to approve, disapprove or rescind approval of, requests for placement of the signals of mandatory carriage stations on PEG Channels.

B. Public Information.

The Commission also seeks comments relating to the information that should be provided to cable subscribers concerning mandatory carriage.

³ These notice provisions also reduce the risk of creating substantial disruption for cable subscribers through the movement of signals on and off PEG Channels as local access needs continue to develop and change over relatively short periods of time.

In particular, Section 4 requires cable operators to provide at least 30 days' advance notice of any plan to reposition or delete a local commercial station from mandatory carriage only to the affected station; in contrast, under similar circumstances Section 5 requires advance notice to be provided both to the affected station and to cable subscribers.

The Local Governments urge the Commission to create uniform notice rules by requiring cable operators to provide advance notice of the repositioning or the deletion of commercial and noncommercial stations both to the affected stations and to cable subscribers. Cable operators should also be required to provide a copy of all such notifications to the appropriate franchising authorities.

Further, a cable operator should be required to maintain in its public inspection file a listing of all television stations afforded carriage on its systems under Sections 4 and 5 of the 1992 Act, as well as all stations refused carriage and the reasons for the refusal.

C. Complaint Procedures.

The Local Governments believe that, consistent with the provisions of the 1992 Act, the Commission, rather than franchising authorities, should be the entity responsible for taking remedial steps in

situations in which a cable system has failed to comply with the signal carriage requirements of the 1992 Act. Nevertheless, the appropriate franchising authorities should be served with a copy of all pleadings, as well as all correspondence from the FCC to the local cable operator or affected broadcast stations, pertaining to any complaint filed with the FCC pursuant to Sections 4 or 5 of the 1992 Act.

III. CONCLUSION.

The Local Governments believe that franchising authorities should be afforded a substantial degree of discretion in approving or disapproving requests by cable operators to place signals carried pursuant to the mandatory carriage provisions of the 1992 Act on a cable system's PEG Channels, in accordance with the rules proposed herein. The Local Governments further urge the Commission to require cable operators to provide advance notice to the affected stations, to cable subscribers and to the franchising authority, of any channel repositioning or the deletion of a signal carried pursuant to Sections 4 or 5 of the Act. Local Governments support the adoption of a rule requiring the listing of all signals carried on a cable system pursuant to Sections 4 and 5 within each cable operator's public inspection file and all signals the

cable operator has refused to carry. Finally,
franchising authorities should be served with copies of
all complaints filed pursuant to Sections 4 and 5 of the
1992 Act, along with all related documents.

Respectfully submitted,



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